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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DILLON LAKE, INC., Cross-complainant and Respondent, v. MIKE RULIFSON, Cross-defendant and Appellant.	G050091 (Super. Ct. No. RIC526351) O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County, Sharon J. Waters, Judge. Judgment affirmed in part and reversed in part.

Winters Law Firm and Dennis Winters for Cross-defendant and Appellant.

Hardy Law Group, Del Hardy and Stephanie Rice for Cross-complainant and Respondent.

* * *

After a bench trial the court entered a $503,000 judgment in favor of cross-complainant and respondent Dillon Lake, Inc. (Dillon) against cross-defendant Site Concepts, Inc. (Site)[1] and cross-defendant and appellant Mike Rulifson for breach of contract and disgorgement of payments made on a construction subcontract. The court ruled Rulifson was the alter ego of Site. On appeal Rulifson argues there was no basis to disgorge the payments because Site was timely licensed and further that there was insufficient evidence of alter ego. We agree there was insufficient evidence of alter ego and reverse the judgment against Rulifson on that basis. We affirm the judgment in all other respects.

FACTS AND PROCEDURAL HISTORY

Dillon decided to develop certain real property in Indio (Project). In July 2007 it entered into a contract (Contract) with Charles Tippie for Tippie to perform onsite work including rough grading, installation of sewer, water, storm drains, and street improvements, fencing, landscaping, walls and construction of a lake and a tennis court. The Contract price was slightly over $5.2 million.

Tippie turned around and entered into a contract (Subcontract) with Site for Site to "act as project manager and provide all labor, equipment, material, insurance, supervision, and all other requirements to complete" the Contract between Tippie and Dillon. Site agreed to pay Tippie 30 percent of its profits from Contract and to reimburse Tippie for insurance, permits and licenses. This was the extent of the terms of the half-page Subcontract.

At the time Site entered into the Subcontract, it did not have a contractor's license. It obtained its license approximately six months later on February 4, 2008.

In December 2007 Site "pre-water[ed]" the ground to prepare it for grading and to eliminate or reduce dust. It also performed a "grading mobilization," i.e., renting

[1] Site's appeal was dismissed and it is no longer a party to this appeal. We discuss this later in the opinion.

and taking delivery of large tractors and other equipment. In December 2007 Site billed Dillon $150,000 for this work.

After Site obtained its license, it performed work on the Project generating receivables of over $700,000. Site had already filed a Preliminary Notice. At some point it suspended work, filed a Mechanic's Lien, and subsequently filed an action to foreclose on the Mechanic's Lien. Dillon filed a cross-complaint[2] for breach of contract, negligence, construction defects, contracting without a license, alter ego, and disgorgement of profits pursuant to Business and Professions Code section 7031.[3]

Subsequently, Dillon prevailed on its motion for summary judgment on the first amended complaint. The court ruled Site performed work on the Project before it was properly licensed and did not prove it had complied with section 7031, subdivision (a), which requires that a contractor be licensed when performing any work for which a license is required. No judgment was ever entered on the complaint.

The case was then tried on Dillon's cross-complaint, and the court awarded judgment in the sum of $503,000 against both Site and Rulifson, finding Rulifson was the alter ego of Site.

Rulifson filed a notice of appeal from the judgment on the cross-complaint. Site also filed a notice of appeal from both the judgment and the summary judgment. Subsequently, the appellate court ordered Site to provide a copy of the judgment from which it was appealing.

In a later order, the appellate court ordered Site to provide a copy of the judgment on the complaint, or else face dismissal of its appeal. Site advised the court no judgment on the complaint had been entered and Site's appeal was dismissed without

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[2] Neither the complaint nor the cross-complaint is included in the clerk's transcript. In the reply brief Dillon refers to a second amended cross-complaint and lists the purported causes of action without reference to the record. Rulifson does not dispute this.

[3] All further statutory references are to this code.

prejudice should an appealable final judgment be entered. Site did not file a subsequent notice of appeal.

Additional facts are set out in the discussion.

SITE'S APPEAL AND MOTION TO DISMISS RULIFSON'S APPEAL

Dillon argues that because Site's appeal was dismissed, it is not a party to this appeal and the only issue before us is Rulifson's appeal as to the judgment on the cross-complaint.

Pursuant to the one final judgment rule, Rulifson could not have appealed from the judgment on the cross-complaint only. He "could appeal only from a final judgment which resolved both the complaint and the cross-complaint." (*ECC Construction, Inc. v. Oak Park Calabasas Homeowners Assn.* (2004) 122 Cal.App.4th 994, 1002.) However, where, as here, the parties to the cross-complaint are not identical to the parties to the complaint, the judgment on the cross-complaint is a final adjudication from which an appeal may be taken. (*Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109, 132-133.)

It is unclear whether Dillon is arguing Rulifson may appeal only the alter ego question. But to effectively appeal that, Rulifson must also be allowed to appeal the substantive findings dealing with the contractor's licensing issue. "'"[W]here the part [of a judgment] appealed from is so interwoven and connected with the remainder, . . . that the appeal from a part of it . . . involves a consideration of the whole, . . . if a reversal is ordered it should extend to the entire judgment. The appellate court, in such cases, must have power to do that which justice requires and may extend its reversal as far as may be deemed necessary to accomplish that end." [Citation.]' [Citations.]" (*Carson Citizens for Reform v. Kawagoe* (2009) 178 Cal.App.4th 357, 371.) Even assuming Dillon could prevail on the alter ego claim, if there is no underlying liability against Site, the judgment against Rulifson could not stand. Therefore, we will also consider whether Site had the right to collect from Dillon or was required to disgorge payments.

In another argument, Dillon seeks to have Rulifson's appeal dismissed because he obtained several extensions to file his briefs, thereby delaying an expeditious resolution of the case. A request to dismiss an appeal requires a separate written motion, including points and authorities and a supporting declaration. (Cal. Rules of Court, rule 8.54(a); *Jocer Enterprises, Inc. v. Price* (2010) 183 Cal.App.4th 559, 565 [request to dismiss in respondent's brief fails for want of separate motion].) Therefore, without considering the merits, we deny the motion.

DISCUSSION

1. Contractor's License

In granting the motion for summary judgment the court ruled Site performed construction work on the Project prior to the time it had its contractor's license as required by section 7031 and was not entitled to any payment for this work. Rulifson argues none of the prelicense work Site performed required a contractor's license. We are not persuaded by this argument.

The Contractors' State License Law (License Law) consists of a "comprehensive legislative scheme governing the construction business." (*WSS Industrial Construction, Inc. v. Great West Contractors, Inc.* (2008) 162 Cal.App.4th 581, 587; *WSS*.) "'The purpose of the licensing law is to protect the public from incompetence and dishonesty in those who provide building and construction services. [Citation.] The licensing requirements provide minimal assurance that all persons offering such services . . . have the requisite skill and character, understand applicable local laws and codes, and know the rudiments of administering a contracting business. [Citations.]' [Citations.]" (*Ibid*, quoting *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 995.) The public policy underlying the License Law is meant "'to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay.' [Citation.]" (*WSS*, at p. 589.)

A person performing acts for which a license is required may not recover payment "'*for the performance* of any act or contract where a license is required . . . without [proving] that he or she was a duly licensed contractor at all times during the *performance* of that act or contract.' [Citation.]" (*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 435; §7031, subd. (a).) The consumer of the work of an unlicensed contractor may sue to recover any amounts paid for performance of that work. (§ 7031, subd. (b).)

Section 7026 defines a contractor as being synonymous with a "'builder.'" A contractor under that section includes "any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or herself or by or through others, construct . . . any building, . . . project, development or improvement, or to do any part thereof, including . . . the cleaning of grounds or structures in connection therewith . . . ."

Rulifson's first line of attack is that the Contract was not a contract to "build" anything but was merely an agreement to "prepare a site for others to build." Rulifson seems to imply that no contractor's license was required, under either the Contract or the Subcontract.

But a review of the work under the Contract quickly dispels this notion. It consists of onsite work including installation of sewer and water systems, and storm drains, street improvements, landscaping, construction of fencing, walls, a tennis court, and a lake, all of which require a license. (See, e.g., Cal. Code Regs., tit. 16, §§ 832.08 (concrete), 832.12 (earthwork & paving), 832.13 (fencing), 832.27 (landscaping), 832.29 (masonry), 832.36 (plumbing), 832.42 (sanitation system), 832.53 (swimming pool); *Vallejo Development Co. v. Beck Development Co*. (1994) 24 Cal.App.4th 929, 940 [contractor's license required for construction of storm drains, sewers, streets, curbs, gutters, and sidewalks]; *People v. Vis* (1966) 243 Cal.App.2d 549, 558 [grading requires contractor's license].)

Rulifson then concedes that some of the activity under the Contract did require a contractor's license. But he argues that watering the ground and hiring equipment did not require such a contractor's license. Rulifson is mistaken.

First, a specialty landscaping contractor's license is required to "prepare[] and grade[] plots and areas of land for the installation of any agricultural, horticultural, and decorative treatment or arrangement." (Cal. Code Regs., tit. 16, § 832.27.) This encompasses Site's "pre-watering" of the ground.

Second, in the Subcontract Site specifically agreed to "provide all . . . equipment . . . and all other requirements to complete" the Contract. Both the watering and the equipment rental were necessary to perform the Subcontract and thus part of the duties required thereunder.

Rulifson argues the Subcontract is a hybrid, that is, it contains work for which a license is required and work for which no license is required, the latter including the pre-watering and equipment rental. Thus, he claims, that work may be severed from the Subcontract, and Site is entitled to payment for those discrete services.

A similar claim was made in *Banis Restaurant Design, Inc. v. Serrano* (2005) 134 CalApp.4th 1035, where the unlicensed plaintiff filed suit to recover payment for its "design services" that included preparing drawings and specifications for electrical and plumbing, coordinating with other trades, and procuring equipment, labor, and materials. The plaintiff argued, in part, that the work for which it claimed no license was required could be severed from the remainder of the contract. (*Id.* at pp. 1045-1047.) The court rejected the severability argument because "each aspect of [the] plaintiff's work was integral to the restaurant project, and was not minor or incidental," but instead was "part of an integral whole." (*Id*. at p. 1047.)

The same is true here. The prelicense acts for which Site sought compensation were integral to the subcontract. It was critical, for example, that Site

understand which heavy equipment was required to properly perform the required tasks, to fulfill public policy requiring contractors to have sufficient knowledge.

The same proscription against severing contracts was reiterated in *WSS*. In *WSS* the plaintiff sued the defendant general contractor to recover for work performed under a subcontract. At the time the plaintiff submitted its bid and at the time it signed the subcontract, the plaintiff was not licensed. Prior to the licensing the plaintiff began work by preparing shop drawings and ordering special parts. Also prior to licensing it submitted invoices for that work and the materials.

The court held the plaintiff was not entitled to sever the contract and be paid for the work it performed prior to licensing. (*WSS, supra,* 162 Cal.App.4th at pp. 585, 591, 592.) It explained preparation of the shop drawings was part of the work included in the defendant's bid and was "performed in furtherance of the scope of the work included in the subcontract." (*Id.* at p. 592; see also *Lewis & Queen v. N.M Ball Sons* (1957) 48 Cal.2d 141, 150 [court disallowed payment to unlicensed subcontractor for work including application of water to compact ground and equipment rental].)

The two cases on which Rulifson relies do not support his argument. In *Contractors Labor Pool, Inc. v. Westway Contractors, Inc.* (1997) 53 Cal.App.4th 152 the plaintiff furnished construction workers to the defendant, who had subcontracted to do structural concrete work. The bonding company argued the plaintiff was a "contractor" (§ 7026). But the court held furnishing laborers was not activity requiring a contractor's license, pointing out "the rule that a person or company in the business of supplying equipment or hiring out laborers to be supervised by others does not act in the capacity of a contractor and is not required to have a license. [Citations.]" (*Id*. at p. 166.)

However, as discussed above, Site's activity was not limited to the hiring out of equipment. More importantly, after the *Contractors Labor Pool* case was filed, section 7026.1 was amended to add that an agency providing temporary employees to

perform work for contractors is included in the definition of a contractor. (§7026.1, subd. (a)(3), as amended by Stats. 1991, ch. 1160, § 6.)

Likewise, *Executive Landscape Corp. v. San Vicente Country Villas IV Assn.* (1983) 145 Cal.App.3d 496 is distinguishable. In *Executive*, a landscaping company sued to recover on a contract to maintain common areas of the defendants' condominium complex. The trial court sustained a demurrer on the ground the plaintiff was not licensed and could not recover under section 7031. The Court of Appeal reversed on the basis that the "form of the contract indicates the likelihood that some, perhaps minimal, services requiring a license may be performed under it. A contractual clause calling for hybrid services does not on face render the contract unenforceable." (*Id*. at p. 501.) But *Executive* predates *Banis* and *WSS* where the courts frowned on the theory of severability.

Rulifson conclusorily and illogically argues that in *Executive* and the current case the contracts were hybrids, in contrast to *Banis* and *WSS* where there was one specific purpose to the contracts with all work done in furtherance of that purpose. We disagree. Rather, as Dillon argues, because the overall purpose of the contract requires a license, and based on the strong public policy to protect against unlicensed contractors, it would be improper for the court to segregate out the prelicense work.

"'To protect the public, the [License Law] imposes strict and harsh penalties for a contractor's failure to maintain proper licensure.' [Citation.]" (*Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 30.) """Section 7031 represents a legislative determination that the importance of deterring unlicensed persons from engaging in the contracting business *outweighs any harshness between the parties*, and that such deterrence can best be realized by denying violators the right to maintain any action for compensation in the courts of this state. [Citation.] . . ." [Citations.]' [Citation.]" (*WSS, supra,* 162 Cal.App.4th at p. 589.)

In sum, there is no basis for overturning the trial court's ruling that Site must disgorge any payments Dillon made under the Subcontract.

2. Alter Ego

The court ruled Rulifson was the alter ego of Site. It found "there was a sufficient unity of interest and ownership between" the two such that there were no separate personalities of the corporation and the individual. Maintaining the fiction the corporation had a separate existence "would promote injustice." Rulifson owned 100 percent of the Site stock since its incorporation "and actively participated in the corporate activities, particularly its financial activities."

Rulifson asserts there are no grounds to support the finding of alter ego. We review a challenge to an alter ego ruling using the substantial evidence test. (*Baize v. Eastridge Companies, LLC* (2006) 142 Cal.App.4th 293, 302.)

When a party claims there is insufficient evidence we start with the presumption the judgment is correct. (*Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1251-1252.) Our role is to determine only if "'there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury.' [Citations.] We cannot reweigh the evidence, but must resolve all conflicts in favor of the prevailing party. [Citation.]" (*Ibid*.) "[W]hen two or more inferences can reasonably be deduced from the facts, [we are] without power to substitute [our] deductions for those of the trial court." (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) We must accept all evidence supporting the successful party, disregard the conflicting evidence, and draw all reasonable inferences to uphold the verdict. (*Minelian v. Manzella* (1989) 215 Cal.App.3d 457, 463.)

But substantial evidence is not "synonymous with 'any' evidence." (*Quigley v. McClellan* (2013) 214 Cal.App.4th 1276, 1282). It must be of "ponderable legal significance that is reasonable, credible and of solid value . . . ." (*Id*. at pp. 1282-1283.)

"""Under the alter ego doctrine . . . where a corporation is used by an individual or individuals, or by another corporation, to perpetrate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and treat the corporation's acts as if they were done by the persons actually controlling the corporation. [Citations.] . . ." [Citation.]'" (*Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1106-1107.)

Alter ego is based on two basic principles: there is "'such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist'" and there would be "'an inequitable result if the acts in question are treated as those of the corporation alone.' [Citation.]" (*VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc*. (2002) 99 Cal.App.4th 228, 244-245.)

Courts have considered a variety of circumstances to determine whether the corporate entity should be disregarded. "No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine. [Citation.]" (*Id*. at p. 245.) "Alter ego is an extreme remedy, sparingly used. [Citation.]" (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539.)

In this case, the court found failure to apply the alter ego doctrine would promote injustice, but that finding is not supported by the record.[4] The mere fact Dillon could not collect its judgment against Site is not enough to prove alter ego.

"'Certainly, it is not sufficient to merely show that a creditor will remain unsatisfied if the corporate veil is not pierced, and thus set up such an unhappy circumstance as proof of an "inequitable result." In almost every instance where a plaintiff has attempted to invoke the doctrine he is an unsatisfied creditor. The purpose of the doctrine is not to protect every unsatisfied creditor, but rather to afford him

[4] We need not and do not decide whether there was sufficient evidence to prove the requisite unity of interest.

protection, where some conduct *amounting to bad faith* makes it inequitable, under the applicable rule above cited, for the equitable owner of a corporation to hide behind its corporate veil.' [Citation.]" (*Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1213; *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 418 ["Difficulty in enforcing a judgment does not alone satisfy this element"; summary judgment denied due to failure to prove inequity].)

Dillon argues it has to have "a license[d] contractor . . . come and redo the project" "before the city will sign off." But that is because Site lacked a license, not because there was a unity of interest between Site and Rulifson. The fact Site did not have a license does not make Rulifson liable as the alter ego of Site.

Dillon argues Rulifson committed crimes (both misdemeanors) by using the license of another person in violation of section 2027.3 and acting as a contractor without a license in violation of section 7028. But, again, this does not show Dillon will suffer an injustice without an alter ego finding. Nor is there evidence Rulifson set up Site for the purpose of committing these acts.

Moreover, there is no evidence Rulifson created Site to avoid personal liability to anyone. In fact, the opposite is true. When Dillon failed to pay Site for the work it had done, Southwestern loaned Site $300,000 so it could pay all of its creditors.

In sum**,** there is insufficient evidence to show Dillon will suffer injustice unless the acts of Site are treated as if they were done by Rulifson.

DISPOSITION

The judgment against Rulifson is reversed. The remainder of the judgment is affirmed. Dillon is entitled to costs on appeal from Site only.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.